48A C.J.S. Judges § 212

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Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

D. Pensions and Retirement Benefits

§ 212. Generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges⚷22(11)

Under some statutes, a judge may be entitled to a pension under certain conditions.

The legislature may provide for pensions or retirement allowances for judges under certain conditions.[1] Judicial officers are entitled to receive compensation for their services in accordance with the provisions of the law,[2] and retirement benefits constitute deferred compensation.[3] So, on retirement because of age, under some statutes, a judge may be entitled to compensation during the unexpired portion of the term for which the judge was selected,[4] or during the remainder of the judge's life.[5] Generally, statutes allowing for such compensation are valid[6] although various provisions of such statutes have been held unconstitutional.[7]

While it has been said that retirement benefit statutes have prospective application only,[8] various statutes have been held to have retroactive effect.[9] A retirement statute does not require that eligibility for a pension should depend upon circumstances occurring subsequent to enactment of

the law,[10] and a retirant's period of judicial service prior to passage of the act is permitted to be taken into consideration in determining eligibility for its benefits.[11] So, providing benefits under an amendment to judges who fulfilled their service requirements prior to the effective date of the amendment does not offend the rule against retroactivity.[12]

In order to be entitled to compensation under statutes providing for retirement pay, there must be a compliance with the statutory conditions.[13] The conditions may include length of service on the bench,[14] good conduct in office,[15] and reaching a specified age.[16] In addition, the legislature may require that a retired justice be available to perform certain duties if called on to do so.[17]

A retired judge, who disagrees with the decision of the retirement system adjusting the judge's retirement allowance, must pursue proper legal remedies.[18]

Transfer of credit.

Under some judicial retirement statutes, a judge is entitled to have services rendered in another capacity credited toward the judge's retirement status,[19] but the credit will not be allowed where the services do not fall within the provisions of the statute.[20]

Retirement funds, contributions, and amount of benefits.

Under various constitutional and statutory provisions, a state may set up a retirement plan for judges in which active judges contribute a portion of their salaries to a retirement fund,[21] and in some instances, the city or county may be required to make a matching contribution.[22] However, the State may be under a constitutional mandate to pay judges retirement benefits without contribution on their part,[23] and under some statutes, the retirement fund is funded by the collection of fees.[24] The relation of parties under a judges' retirement plan is contractual.[25] The amount of retirement benefits is usually computed on the basis of a specified percentage of the annual salary[26] and must be paid without unreasonable delay.[27]

CUMULATIVE SUPPLEMENT

Cases:

Right to hold judicial office was not fundamental one, and thus, judges' equal protection challenge to judicial retirement statutes which provided for forfeiture of vested retirement benefits if judge ran for, was elected to, and served in new term of office after reaching age of 70, was subject to rational basis review. U.S. Const. Amend. 14; Ark. Const. art. 2, § 3. Landers v. Stone, 2016 Ark. 272, 496 S.W.3d 370 (2016).

Under the Judges' Retirement System II Law (JRS II), a judge who receives a disability retirement benefit is not entitled to also receive an early retirement benefit. Cal. Gov't Code §§ 75521, 75560.1. Warner v. California Public Employees' Retirement System, 239 Cal. App. 4th 659, 190 Cal. Rptr. 3d 870 (4th Dist. 2015).

Under statute providing that judicial pensioners are entitled to an allowance that is calculated as a fixed percentage of whatever salary is payable to the judge holding the particular judicial office to which the retired judge was last elected or appointed, the allowances for judicial pensioners remain tethered to the salaries paid to actual, rather than hypothetical, active jurists. Cal. Gov't Code §§ 75032, 75033.5, 75076. Staniforth v. Judges' Retirement System, 226 Cal. App. 4th 978, 172 Cal. Rptr. 3d 151 (4th Dist. 2014), as modified, (May 29, 2014) and as modified, (June 4, 2014).

[END OF SUPPLEMENT]

Footnotes

1	Ind.—Mance v. Board of Directors of Public Employees' Retirement Fund, 652 N.E.2d 532 (Ind. Ct. App. 1995). **Statutory ambiguity** Any ambiguity in a statute providing retirement benefits for judges must be resolved in favor of the persons intended to be benefited thereby. La.—Swift v. State, 342 So. 2d 191 (La. 1977).
2	§ 189.
3	Pa.—Harper v. State Employees' Retirement System, 538 Pa. 520, 649 A.2d 643 (1994).
4	Pa.—Firing v. Kephart, 466 Pa. 560, 353 A.2d 833 (1976). As to termination of tenure of office because of age, generally, see § 64.
5	Mass.—Opinion of the Justices, 360 Mass. 907, 277 N.E.2d 293 (1971). Minn.—Sylvestre v. State, 298 Minn. 142, 214 N.W.2d 658 (1973). **Purpose**

The purpose of providing pensions for retired judges is to induce competent members of the legal profession to give up the often more remunerative practice of law for a position on the bench at less compensation and to reward judicial officers for valuable service rendered the state over a period of years.

Md.—Walker v. Montgomery County Council, 244 Md. 98, 223 A.2d 181 (1966).

6   U.S.—Gentry v. Uniform Judicial Retirement System of North Carolina, 378 F. Supp. 1 (M.D. N.C. 1974).

La.—Swift v. State, 342 So. 2d 191 (La. 1977).

Mich.—Hughes v. Judges' Retirement Bd., 407 Mich. 75, 282 N.W.2d 160 (1979).

7   Ill.—Bardens v. Board of Trustees of Judges Retirement System, 22 Ill. 2d 56, 174 N.E.2d 168 (1961).

Minn.—Gardner v. Itasca County, 280 Minn. 51, 157 N.W.2d 753 (1968).

Tenn.—Miles v. Tennessee Consol. Retirement System, 548 S.W.2d 299 (Tenn. 1976).

8   Del.—Stiftel v. Carper, 378 A.2d 124 (Del. Ch. 1977), judgment aff'd, 384 A.2d 2 (Del. 1977).

Ky.—Littleton v. Reed, 456 S.W.2d 695 (Ky. 1970).

Mo.—State ex rel. Cleaveland v. Bond, 518 S.W.2d 649 (Mo. 1975).

9   Ariz.—Krucker v. Goddard, 99 Ariz. 227, 408 P.2d 20 (1965).

Ill.—Bardens v. Board of Trustees of Judges Retirement System, 22 Ill. 2d 56, 174 N.E.2d 168 (1961).

10   Mich.—Hughes v. Judges' Retirement Bd., 407 Mich. 75, 282 N.W.2d 160 (1979).

11   Mich.—Hughes v. Judges' Retirement Bd., 407 Mich. 75, 282 N.W.2d 160 (1979).

12   **Condition precedent**
In order to be entitled to benefits from the effective date of the amendment to the judges' retirement act, the applicant must, as a condition precedent, have the requisite pensionable status under the amendment at the time of its passage and must be a member of the retirement system and not a beneficiary of the retirement system.

Mich.—Hughes v. Judges' Retirement Bd., 407 Mich. 75, 282 N.W.2d 160 (1979).

13   Cal.—Gorman v. Cranston, 64 Cal. 2d 441, 50 Cal. Rptr. 533, 413 P.2d 133 (1966).

La.—Swift v. State, 342 So. 2d 191 (La. 1977).

Minn.—Anderson v. State, 298 Minn. 158, 214 N.W.2d 668 (1973).

14   Fla.—Falk v. Kennedy, 332 So. 2d 328 (Fla. 1976).

Minn.—Sylvestre v. State, 298 Minn. 142, 214 N.W.2d 658 (1973).

Wis.—State ex rel. Neelen v. Lucas, 24 Wis. 2d 262, 128 N.W.2d 425 (1964).

Computation of term
(1) For retirement purposes, a judge's term of service begins when the judge first becomes a judge.

Ill.—People ex rel. Bua v. Powell, 39 Ill. 2d 202, 234 N.E.2d 801 (1968).

(2) The date upon which a judge's judicial service began for purpose of determining his pension benefits was the day on which he signed and filed the oath of office.

Wash.—Jordan v. O'Brien, 79 Wash. 2d 406, 486 P.2d 290 (1971).

15   N.C.—In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978).

16   Cal.—Ambrose v. Cranston, 261 Cal. App. 2d 137, 68 Cal. Rptr. 22 (2d Dist. 1968).

Mass.—Opinion of the Justices, 360 Mass. 907, 277 N.E.2d 293 (1971).

Pa.—DiNubile v. Kent, 466 Pa. 572, 353 A.2d 839 (1976).

17   Cal.—Pickens v. Johnson, 42 Cal. 2d 399, 267 P.2d 801 (1954).

Mass.—Opinion of the Justices, 362 Mass. 895, 284 N.E.2d 908 (1972).

18   **Special proceeding**
A retired supreme court justice, who disagreed with the decision of the city employees' retirement system adjusting his retirement allowance to account for an improper withdrawal of money from an annuity savings account, should have sought relief by means of a special proceeding rather than by bringing an action in the civil court.

N.Y.—McLaughlin v. New York City Emp. Retirement System, 70 A.D.2d 631, 417 N.Y.S.2d 4 (2d Dep't 1979).

19   Ala.—In re Hines, 293 Ala. 230, 301 So. 2d 545 (1974).

Cal.—Rosenthal v. Cory, 69 Cal. App. 3d 950, 138 Cal. Rptr. 442 (2d Dist. 1977).

Military service
"Military service" within the meaning of a statute governing participation in a judges' retirement system during periods of military service encompassed only active duty service not necessarily performed during wartime and not performed while the participant is serving as a judge, and inactive reserve duty does not qualify as "military service."

Ill.—Lieb v. Judges' Retirement System of Illinois, 314 Ill. App. 3d 87, 247 Ill. Dec. 36, 731 N.E.2d 809 (1st Dist. 2000).

20   Ala.—Matter of DeCarlo, 344 So. 2d 1197 (Ala. 1977).

Cal.—Kirk v. Flournoy, 36 Cal. App. 3d 553, 111 Cal. Rptr. 674 (3d Dist. 1974).

21   Idaho—Wilson v. Nielson, 75 Idaho 145, 269 P.2d 762 (1954).

Increase in contributions
An amendment to the state judiciary pension act which increased the amount of contribution required by members of the state judiciary who elected to accept the provisions of the judicial pension law was intended to apply to members of the state judiciary who elected to participate in the judicial pension plan prior to the effective date of the amendment.

Del.—Carper v. Stiftel, 384 A.2d 2 (Del. 1977).

Number of years of contribution
Under a provision of the judicial retirement system that any person who has served as supreme court justice or circuit judge for an aggregate period not less than 10 years and whose service is terminated may leave his contributions in the judicial retirement trust fund, the years of "service" is not limited to years of

contribution; rather, years of service in the aggregate simply determines eligibility for retirement, with years of contributions being ultimately determinative of the amount of retirement benefits to be received if any.

Fla.—Adams v. Dickinson, 264 So. 2d 17 (Fla. 1st DCA 1972).

Refund of contributions
Although a superior court judge, who resigned, had a vested right to a refund of the contribution made by him to the judges' retirement fund, if he withdrew his contributions, he would elect to forfeit the period of prior service as superior court judge and start his future retirement as of the date he assumed duties on the court of appeals.

Ariz.—Krucker v. Goddard, 99 Ariz. 227, 408 P.2d 20 (1965).

22 Neb.—State ex rel. Meyer v. Banner County, 196 Neb. 565, 244 N.W.2d 179 (1976).

23 La.—Moise v. Louisiana State Emp. Retirement System, 371 So. 2d 1171 (La. Ct. App. 1st Cir. 1979), writ denied, 373 So. 2d 509 (La. 1979).

24 Ga.—Holcombe v. Gunby, 241 Ga. 105, 243 S.E.2d 65 (1978).

25 Del.—Stiftel v. Carper, 378 A.2d 124 (Del. Ch. 1977), judgment aff'd, 384 A.2d 2 (Del. 1977).

Mich.—Campbell v. Michigan Judges Retirement Bd., 378 Mich. 169, 143 N.W.2d 755 (1966).

Minn.—Sylvestre v. State, 298 Minn. 142, 214 N.W.2d 658 (1973).

Or.—Bryson v. Public Employees Retirement Bd., 45 Or. App. 27, 607 P.2d 768 (1980).

26 Mass.—Opinion of the Justices, 360 Mass. 907, 277 N.E.2d 293 (1971).

Or.—Bryson v. Public Employees Retirement Bd., 45 Or. App. 27, 607 P.2d 768 (1980).

"Salary"
Retirement benefits paid pursuant to a judges' retirement system are based only on the statutory salary and not on a voluntary county supplement which the legislature has authorized counties to pay their trial judges as the term "salary" as used in the judges' retirement system statutes means the statutory minimum salary established by the legislature.

Ind.—Mance v. Board of Directors of Public Employees' Retirement Fund, 652 N.E.2d 532 (Ind. Ct. App. 1995).

Reduction of benefits
The city employees' retirement system had a right to reduce a judge's pension to account for his improper withdrawal of money from an annuity savings account.

N.Y.—McLaughlin v. New York City Emp. Retirement System, 70 A.D.2d 631, 417 N.Y.S.2d 4 (2d Dep't 1979).

27 **Delay held unreasonable**
The city retirement system's delay of almost eight months in making pension payments to a retired justice of the supreme court was unreasonable in the absence of any explanation therefor so as to require an award of interest for the period of unreasonable delay.

N.Y.—McLaughlin v. New York City Emp. Retirement System, 96 Misc. 2d 58, 409 N.Y.S.2d 160 (App. Term 1978), order aff'd, 70 A.D.2d 631, 417 N.Y.S.2d 4 (2d Dep't 1979).

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